

JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE  
SAN DIEGO MODEL SCHOOL DEVELOPMENT AGENCY

THIS AGREEMENT is made and entered into as of July \_\_, 2002, by and between the following parties:

(a) City of San Diego, a municipal corporation and charter City, organized and existing under the laws of the State of California (the "City");

(b) Housing Authority of the City of San Diego, a body corporate and politic, organized, formed and existing under the laws of the State of California (the "Housing Authority");

(c) Redevelopment Agency of the City of San Diego, a body corporate and politic, organized, formed and existing under the laws of the State of California (the "Redevelopment Agency"); and

(d) San Diego Unified School District, a school district, formed and existing under the laws of the State of California (the "School District").

The JPA is formed pursuant to the provisions of Government Code Section 6500, et. seq. and pursuant to any state legislation that shall hereafter be enacted which may facilitate and/or augment the implementation, construction and distribution of the POTENTIAL PROJECT (as defined below).

RECITALS

A. The City Council of the City of San Diego, acting pursuant to the provisions of the California Community Redevelopment Law (California Health and Safety Code § 33000 et seq.), has approved a Redevelopment Plan for the City Heights Redevelopment Project.

B. The School District has previously commenced a process to plan for the construction of a new elementary school in the City Heights Redevelopment Project Area (the "School"). The District has prepared a Draft Environmental Impact Report pursuant to the California Environmental Quality Act (California Public Resources Code, Section 21000 et. seq., ("CEQA") and the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.) for the School as a stand-alone project. The Draft Environmental Impact Report could be of potential value should the POTENTIAL PROJECT go forward.

C. The City, School District, Housing Authority and Redevelopment Agency mutually desire to consider the feasibility of cooperating in the planning, financing and construction of a development that would combine a new elementary school with multifamily housing of various kinds, including market rate, low and moderate income, for sale and for rent to replace, in part, housing units, both for sale and for rent, that will be removed by the construction of the school, and to provide recreational opportunities, neighborhood commercial uses and additional family social services, all in a manner that maximizes the

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efficiency of using public resources, brings important City services to City Heights residents and the citizens of surrounding communities, revitalizes the core of the community and establishes a pedestrian-friendly neighborhood center (hereinafter referred to as the "POTENTIAL PROJECT") through the formation of a Joint Exercise of Powers Agency to be known as the San Diego Model School Development Agency or the "Agency".

D. Through a series of public meetings and design presentations conducted jointly by the residents of the City Heights community and the School District, a preliminary proposal has emerged for a potential project within the City Heights Redevelopment Project Area, consisting of an elementary school, multifamily housing development, recreation area, open space, family services center and vehicular parking, to be coordinated in a single development site providing opportunities for joint use of portions of the site.

E. The District has determined that development of the School is feasible, and that development of the School is reasonably foreseeable.

F. There has been no determination by any of the Parties that the POTENTIAL PROJECT, other than the School, is feasible, and it is not reasonably foreseeable at this time that such other facilities or the POTENTIAL PROJECT will be constructed.

G. Pursuant to and in accordance with the powers and authorization provided to public bodies in the California Government Code Sections 6500, et. seq. to exercise common powers the City, School District, Housing Authority and Redevelopment Agency desire to enter into this Joint Exercise of Powers Agreement ("JPA") in order to establish a separate agency to consider the POTENTIAL PROJECT meeting the objectives described in this JPA, to determine its feasibility (including preliminary consideration of potential environmental impacts, if any), to allocate costs and responsibilities among the Parties to the JPA, subject to the ratification of the governing bodies of the members, and, if the POTENTIAL PROJECT is determined to be feasible after appropriate study, to perform environmental review and to finance, construct, and upon completion distribute portions of the POTENTIAL PROJECT to the members in accordance with the terms of this JPA.

H. The parties to this Agreement hereto have and possess certain common powers and authorization to plan, design, study, budget and allocate expenses among themselves, in anticipation of the possible acquisition of property for and the construction of the facilities, together with the necessary public capital improvements for an elementary school, multifamily housing development, recreation area, open space, family services center and vehicular parking and commercial retail to be coordinated in a single development site providing opportunities for joint use of portions of a site such as the POTENTIAL PROJECT.

I. Each of the Parties is authorized to contract with each other for the joint exercise of any common power under Article I, Chapter 5, Division 7, Title 1 of the Government Code of the State of California for the powers listed in Section 3 hereof.

J. The Agency will encourage enactment of Special Legislation, by the State of California, as hereinafter defined, to enhance and/or validate the use of powers by the Agency, regardless of whether the Members hold said powers in common, to help facilitate and streamline the development of the POTENTIAL PROJECT.

NOW, THEREFORE, the City, the Housing Authority, the Redevelopment Agency and the School District, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

### PURPOSES AND POWERS

1. Agency Created. There is hereby created a public entity to be known as the "San Diego Model School Development Agency" or the "Agency", the terms being synonymous. The Agency is formed by this agreement pursuant to the provisions of Article I, Chapter 5, Division 7, Title I (commencing at section 6500) of the Government Code of the State of California. The Agency shall be a public entity separate from the parties hereto.

2. Common Power to be Exercised. The Members have certain powers in common, including but not limited to the powers to determine the nature, scope and feasibility of the POTENTIAL PROJECT, perform environmental review, retain consultants, request for proposals for design and construction, manage design and planning, budget and allocate expenses, and all other powers, whether or not listed herein, held in common by the Members to this Agreement. In addition, the Agency holds all powers incident to and possessed by all joint powers agencies by operation of law.

3. Enactment of Special Legislation. The Agency shall propose the enactment of special legislation that would enhance and/or validate the use of powers of the Agency for the purposes of acquisition of real property, constructing, financing and completing the POTENTIAL PROJECT ("the Special Legislation"). Upon enactment of the Special Legislation by the State of California, the Agency shall have the rights and powers granted to it by the Special Legislation and may exercise its additional powers in accordance with the terms of this Agreement, regardless of whether the Members hold such powers in common.

4. Purpose of the Agreement. The purpose of this Agreement is to jointly exercise the common powers of the Members and the powers gained through the Special Legislation, to consider development of and ultimately to develop the POTENTIAL PROJECT, including all necessary systems, facilities and services ("the Facilities").

5. Powers. The Agency shall have the power in its own name to take any of the actions listed in subparagraphs (a), (b), (c), (d), (g), (h), (i), (j), (l), (m) and (n) before the enactment of the Special Legislation, including any additional powers otherwise allowed under existing law. After enactment of the Special Legislation, the Agency shall have the power in its own name to take any of the actions lists in subparagraphs (a) through (o) hereof:

- (a) To exercise jointly the common powers of its Members in studying and planning ways and means to provide the Facilities.
- (b) To prepare and support legislation that may be necessary to carry out this Agreement.
- (c) To make and enter into contracts for services.
- (d) To contract for the services of engineers, attorneys, planners, and financial consultants, and to employ such other persons, as it deems necessary.
- (e) To acquire, construct, manage and maintain the Facilities necessary to carry out the purposes of this Agreement.
- (f) To acquire, lease, purchase or lease purchase, hold, and dispose of real and personal property, through grant, gift, purchase and/or the use of eminent domain proceedings.
- (g) To incur debts, liabilities, or obligations.
- (h) To sue and be sued in its own name.
- (i) To apply for an appropriate grant or grants under any Federal, State, or local programs for assistance in developing any of its programs subject to the limitations herein set forth.
- (j) To exercise any of the powers set forth in Section 6588 of the Government Code.
- (k) To dispose of property for development and/or use, including lease and/or sale, as appropriate;
- (l) At the appropriate time, to prepare, process and comply with the applicable environmental requirements, including applicable CEQA/NEPA requirements, if any, using the procedures of the City, as appropriate, including the processing of environmental clearances and reports allowing construction and development of the POTENTIAL PROJECT;
- (m) To design and plan the proposed POTENTIAL PROJECT and to obtain the necessary entitlements required for the proposed POTENTIAL PROJECT;
- (n) Any and all other powers and authorities incidental to and/or necessary for the accomplishment of powers and duties of the JPA, including all of those powers referenced in Government Code Section 6508; and

(o) Any and all other powers granted by any Special Legislation of the State Legislature enacted after the formation of this JPA.

In exercising the foregoing powers, the Agency shall be subject to the restrictions upon the manner of exercising the powers of the Housing Authority, except as expressly otherwise provided above, in accordance with the provisions of Government Code Sections 6502, 6503, 6509 and the case of Cooper v. Mountain Recreation and Conservation Authority (1998) 71 Cal. Reprtr.2d 858. The Board, may, from time to time, change the method of proceeding by action of the Board.

6. The School. The District has determined that development of the School is feasible, and the District has prepared a Draft Environmental Impact Report under CEQA for the School. The parties acknowledge that, if the Agency determines the POTENTIAL PROJECT to be feasible, District may elect to provide such information and make the environmental processing for the School part of the environmental processing for the POTENTIAL PROJECT. However, nothing contained in this Agreement shall prevent the District from determining that it should proceed independently with the School, and in the event of such determination by District then it may process the environmental review for the School, independently, as a stand-alone project.

7. Definitions. For the purpose of Agreement, the following words shall have the following meanings:

(a) "Agreement@" means this Joint Exercise of Powers Agreement.

(b) "Agency@" means the San Diego Model School Development Agency formed pursuant to this Agreement.

(c) "Board" or "Board of Directors" means the governing body of the Agency.

(d) "City" means the City of San Diego.

(e) "Director" means any director representing a Member.

(f) "Member" means each of the Members that becomes a signatory to this agreement, including any public entity executing an addendum of the original Agreement as hereinafter provided.

(g) "School District" means the San Diego Unified School District.

(h) "Original Member" means the City, Housing Authority, School District and Redevelopment Agency.

(i) "Fiscal Year" means July 1<sup>st</sup> to and including the following June 30<sup>th</sup>.

(j) "Facility" or "Facilities" means any real or personal property, buildings, works or improvements acquired or constructed by the Agency to carry out the purposes of this Agreement.

(k) "Housing Authority" means the Housing Authority of the City of San Diego.

(l) "Redevelopment Agency" means the Redevelopment Agency of the City of San Diego.

(m) "Commission" means the San Diego Housing Commission.

### ORGANIZATION

8. Membership. The Members of the Agency shall be the Original Members hereto and such other public entities as may execute this Agreement or any addendum hereto.

9. Names. The names, particular capacities, and addresses of the Members at any time shall be as set forth in this Agreement and in any addendum hereto.

10. Board of Directors. The Agency shall be governed by a Board of Directors consisting of the following members: (a) one director appointed by the City; (b) one Director appointed by the Housing Authority; (c) three (3) Directors appointed by the School District; (d) one Director appointed by the Redevelopment Agency; and, (e) one (1) individual who is a resident of the community in which the POTENTIAL PROJECT is to be located, to be appointed by majority vote of the other Directors. Each of the Directors who are appointed by a Member shall serve at the pleasure of the respective appointing Member. Subject to the right of the appointing Member to replace a Director at any time, the term of office of a Director shall be three (3) years. Nothing contained herein shall preclude the reappointment of any Director by the appointing agency. The Director representing the community shall be subject to removal, at any time by a majority of the remaining Directors. The Directors and the Agency shall comply with all applicable laws and regulations affecting officers of Joint Powers Agencies and public entities.

11. Principal Office. As provided by law, the principal office of the Agency shall be designated by the Board. The Board is hereby granted full power and authority to change said principal office from one location to another within the boundaries of one of the Members.

12. Meetings. The Board shall meet at the principal office of the Agency or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board; a copy of such resolution shall be furnished to each party hereto. Regular, adjourned, and special meetings shall be called and held in the manner as provided in Chapter 9, Division 2, Title 5 of the Government Code of the State of California (commencing at Section 54950).

13. Quorum. A majority of the Directors shall constitute a quorum for the purpose of the transaction of business relating to the Agency or to the POTENTIAL PROJECT, as the case may be.

14. Powers and Limitations Thereon. All of the power and authority of the Agency shall be exercised by the Board, subject, however, to the reserved rights of the Members as herein set forth. The Board may, from time to time, exercise power and delegate authority by resolution to officers, employees and agents. Unless otherwise provided herein, each Director shall be entitled to one vote and a vote of the majority of those qualified to vote shall be sufficient for the adoption of any motion, resolution or order and to take any other action deemed appropriate to carry forward the objectives of the Agency. Notwithstanding the foregoing actions to approve the following matters shall require a vote of not less than five (5) of the Directors:

- (a) Approval of budgets;
- (b) Award of any contract for construction of the POTENTIAL PROJECT, or any portion thereof, not previously approved in a budget;
- (c) Issuance of bonds;
- (d) Expenditures not referenced in an approved budget; and
- (e) Early termination of the Agreement.

15. Minutes. The secretary of the Agency shall cause to be kept minutes of regular, adjourned regular, and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director and to each of the Members hereto.

16. Bylaws Adopted. At the first meeting of the Directors of the JPA, the Directors shall adopt and/or promulgate bylaws for the operation of the JPA. These bylaws shall be subject to amendment from time to time as provided for in the bylaws.

17. Assent of Members. The assent or approval of a Member in any matter requiring the approval of the legislative body of the Member shall be evidenced by a certified copy of the resolution of the legislative body filed with the Agency.

18(a). Chief Executive Officer of JPA. The Chief Executive Officer of the Commission shall act as the initial Chief Executive Officer of the JPA and shall, subject to the direction of the Board of Directors of the JPA, be responsible for the operation and management of the JPA. The Board may delegate such authority to the Chief Executive Officer, as it shall, from time to time, determine is appropriate. Notwithstanding the foregoing, the Chief Executive Officer shall have those powers and duties possessed as the Chief Executive of the Commission, as those powers shall be amended from time to time, provided that any powers granted to the Chief Executive Officer of the Commission, by the Commission, after the date of this Agreement must be ratified by a vote of the majority of the Board. The Chief Executive Officer shall serve at the pleasure of the Board.

18(b). Officers. There shall be appointed from the membership of the Board a chairman and a vice chairman. The Board shall appoint a secretary who may be a Director.

The Manager of Financial Services of the Commission shall act as the Treasurer of the Agency. The Treasurer shall be the depository and have custody of all money of the Agency from whatever source. A second and distinct officer of the Commission, holding the title of Budget Officer shall be the Auditor of the Agency. The Auditor shall draw all warrants and pay demands against the Agency approved by the Board. In addition, the Board shall have the power to appoint such additional officers other than the CEO, as it deems necessary. The chairman, vice chairman, and secretary shall hold office for a period of one year commencing July 1 of each Fiscal Year or until the Board appoints new officers, whichever event is later. Any officer, employee, or agent of the Board may also be an officer, employee, or agent of any of the Members. The public officer or officers or persons who have charge of, handle, or have any access to any property of the Agency shall be bonded, and the amount of their bond shall be designated and fixed in the budget for each Fiscal Year, which may be covered by bonds of a Member.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any of the Members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or subject to any of the requirements of such Members.

18(c) Initial General Counsel. The initial General Counsel for the Agency shall be the General Counsel for the Commission. The initial General Counsel shall act at the will of the Agency until a successor is appointed by the Agency, in its sole discretion.

19. INITIAL PLANNING, STUDY, FEASIBILITY OF THE POTENTIAL PROJECT.

(a) Initially the Agency plans to and shall take such action as may be appropriate to plan and study the feasibility of the POTENTIAL PROJECT in the City Heights and if feasible shall plan for the design, finance, construction and operation of a project, on a site or sites in City Heights, which POTENTIAL PROJECT will include at least the following components:

- (1) a new elementary school;
- (2) new multifamily housing on and/or adjacent to the development site, which would be affordable to persons and families in a range, that may include low and/or moderate income levels and/or market rate units, to replace dwelling units that will be acquired and removed for the POTENTIAL PROJECT. The housing may be both for rent and/or for sale;
- (3) family services, such as, by way of example, day-care, health-care and similar facilities and/or commercial retail uses;



(4) an active recreation area providing opportunities for joint use by the community and the school;

(5) a passive open space recreation area;

(6) vehicular parking to serve all of the foregoing uses; and

(7) such other uses as the JPA may determine to be appropriate to further the development objectives of the JPA.

(b) The Agency shall immediately begin the process of examining the feasibility of the POTENTIAL PROJECT, by taking the following actions (which are not listed in any particular order of significance):

(1) proposing the selection of a development site for the POTENTIAL PROJECT subject to the appropriate approvals as required by applicable law;

(2) preparing or causing to be prepared a coordinated site plan(s) for the POTENTIAL PROJECT;

(3) preparing or causing to be prepared a program for the use of recreation areas;

(4) at the appropriate time, preparing or causing to be prepared environmental studies and documents to assess the environmental impacts of the POTENTIAL PROJECT, if any, as and when required by CEQA and, as applicable, the National Environmental Quality Act and its implementing regulations (collectively referred to as "NEPA"), and taking such other actions as may be required to comply with the applicable provisions of CEQA and NEPA;

(5) proposing the enactment of state legislation, as referenced in Exhibit "A," or some form of such legislation, that would enhance and augment the implementation of this joint powers agency, as referenced in the proposed legislation;

(6) selecting and contracting with a developer or development entity for the project management, consulting, planning, architectural, engineering, financial and construction management services as may be desired to carry out the POTENTIAL PROJECT;

(7) preparing or causing to be prepared a preliminary and thereafter final budget(s) for predevelopment, development and construction costs relating to the POTENTIAL PROJECT including sources and uses for the

proposed development and an operating budget relating to the operations of proposed joint use areas;

(8) determining and establishing a fair allocation of costs among the members of this JPA to pay predevelopment costs of the POTENTIAL PROJECT, which may include the advance of funds by a member(s) to be reimbursed by one or more of the other members in accordance with terms and conditions that are mutually acceptable to the Parties and or the contribution of services, equipment and supplies, in kind, as allowed under the applicable provisions of law, as embodied in Government Code Section 6500 et. seq.;

(9) determining a feasible method of financing the POTENTIAL PROJECT, which may include any available public and private sources of funds, including but not limited to contributions from one or more of the Parties to this Agreement and, if appropriate, the issuance of bonds by the JPA, subject to approval of the Board of the JPA;

(10) conducting a coordinated public participation process involving the residents of the City Heights community and surrounding neighborhoods; and

(11) making quarterly reports to the respective legislative bodies of the applicable members of the JPA or as required under applicable law to carry out the POTENTIAL PROJECT

### BUDGETS AND PAYMENTS

20. Budget. Within sixty (60) days after the first meeting of the Board, a general budget for the balance of the fiscal year and the ensuing fiscal year shall be adopted. The initial general budget and each succeeding general budget shall include but not be limited to the following: (a) the general administrative expenses of the Agency to be incurred during the period covered by the general budget; and (b) the allocation among the Members of the amounts necessary to cover the general budget expenditures. Prior to the first full fiscal year of the Agency's operation, and for each successive year, the Board shall approve a preliminary general budget no later than April 1 for the next fiscal year. The Board shall adopt a final general budget no later than July 1 of each year. A copy of the preliminary general budget when approved and a copy of the final general budget when adopted shall be filed with each Member.

21. Effect of Failure of Approval of a General Budget. If, after one hundred twenty (120) days from the first consideration of a general budget, the general budget fails to attain the required vote of the Directors, as referenced in Section 14 hereof, the approving Director(s) may treat the refusal of a Director to approve the budget as a request by a Member represented by such a Director to withdraw from the Agency. Upon giving the Members represented by non-approving Directors thirty (30) days prior written notice, the

Board may proceed with the adoption of a revised general budget and the non-approving Members shall be deemed to have withdrawn from the Agency and shall not be obligated for future debts of the Agency nor shall they receive any benefits of the Agency. Any withdrawing Member shall pay, as previously approved by its governing agency, its share of all costs incurred with respect to the Agency and any Facility prior to said withdrawal. For the purposes of this Section, a vote of two (2) of the three (3) Directors appointed by the School District against the approval of a general budget shall be deemed a refusal of the School District to approve the budget and may cause a withdrawal of the School District from the Agency, at the election of the remaining Directors.

22. Maintenance Budgets. For each Facility maintained by the Agency, pending distribution to its Members, which may be distributed to Member, as an when each facility is completed, a maintenance budget shall be prepared and approved at or prior to each June meeting for the ensuing Fiscal Year. Said budget shall include but not be limited to the following:

- (a) the expenses of maintaining and administering the Facility, pending distribution to a Member, or otherwise;
- (b) an estimate of income from any and all sources, if any; and
- (c) the allocation of maintenance and other expenses among the Members in accordance with the formula set forth in the approved budget.

There shall be included in the budget all expenditures for capital repairs, improvements, or additions, which, by a vote of the Directors, shall be allocated among the Members according to the benefit received by the respective Members.

23. Construction Cost Budget. For each Facility and the POTENTIAL PROJECT as a whole the Agency shall prepare and approve a budget, which shall be updated periodically, but not less frequently than at each June meeting for the ensuing Fiscal Year. The Construction Budget shall show the expenses of construction of each Facility and of the POTENTIAL PROJECT as a whole and shall allocate and distribute the costs of construction to the Members on a fair and equitable basis, based upon the benefit derived by each Member and subject to approval by the Member's governing agency.

24. Expenditure for the Approved Budget. All expenditures within the designations, and limitations of approved general or maintenance and operation budgets, shall be made an authorization of the Board.

25. Payment of Amounts Due. Except, as hereinafter provided, amounts required to be paid by any Member shall be due and payable sixty (60) days after receipt of billing therefor.

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## BOND FINANCING

26. Revenue Bonds. The Board shall have the power and authority to issue revenue bonds for the purposes and in accordance with the procedures and requirements set forth in Article 2, Title 1, Division 7 of the Government Code of the State of California (commencing at Section 6540), or as an alternative in accordance with the procedure and requirements set forth in Article 4, Title 1, Division 7 of the Government Code of the State of California (commencing at Section 6584).

## FACILITIES CONSTRUCTION

27. Acquisition and Construction of Facilities. No Project shall be acquired or constructed by the Board without the consent of not less than five (5) Directors of the Board and unless and until the Special Legislation has been enacted or until a revised composition of the Members otherwise authorizes such construction.

## MAINTENANCE AND OPERATION OF FACILITIES PENDING DISTRIBUTION

28. Maintenance and Operation of Facilities. The Facility shall not be operated by the Agency after completion of the last portion of the Facility. The Agency shall maintain the Facility, in an efficient and economical manner and in a manner not detrimental to the Members until it distributes portions of it to the Members. As soon as is practicable after the completion of the Facility of the POTENTIAL PROJECT, that Facility shall be distributed to its respective Members, or as otherwise directed by the Board.

## ACCOUNTING AND AUDITS

29. Accounting Procedures. Full books and accounts shall be maintained for the Agency in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Agency's auditor, and Treasurer shall comply strictly with requirements of the statute governing joint powers agencies Chapter 5, Division 7, Title I of the Government Code of the State of California, commencing at Section 6500. The Treasurer of the Agency may invest Agency funds in accordance with all applicable laws. All interest collected on Agency funds shall be accounted for and posted to the account of such funds.

30. Audit. The records and accounts of the Agency shall be audited annually by an independent certified public accountant, and copies of the audit reports shall be filed with the County Auditor, the State Controller, the City Auditor and Comptroller and each participating Member within one hundred twenty (120) days of the end of the fiscal year under examination. The audit shall be conducted in accordance with Generally Accepted Accounting Principles in the United States ("GAAP") and shall be accompanied by a financial/compliance opinion of the independent certified public accountant referenced above.

31. Inspection of Records and Audit. At any time during normal business hours and as often as any of the Members deem necessary, the Agency shall, make available to the Member(s) for examination, at reasonable locations within the City of San Diego, all of the data and records with respect to the Agency and all matters covered by this Agreement. The Agency shall permit the Member(s) to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to the matters covered by this Agreement, at the cost and expense of the Member seeking the audit and inspection. The Agency shall maintain such data and records for a period of not less than three (3) years following the submission of each year's annual audit and financial report.

## PROPERTY RIGHTS

32. POTENTIAL PROJECT Facilities. All facilities constructed or acquired by the Agency shall be held in the name of the Agency for the benefit of the Members of the Agency in accordance with the terms of this Agreement

33. Distribution of Assets and Termination of Agency. To the extent that any funds (or property in lieu of funds) received from any Member are used for the acquisition or construction of Facilities, the same shall be recorded on the books of the Agency to the credit of the contributing Member. Upon termination or dissolution of the Agency, the Facilities and any funds in possession of the Agency at such time shall be distributed in kind or sold, and the proceeds thereof distributed to the Members at the time of termination as their interests are recorded on the books of the Agency.

34. Liabilities. Any liability incurred by the Agency during the course of its existence shall be discharged from payments to be made to the Agency by the parties in proportion to their approved participation in Facilities of the Agency for which the liability is attributable. Except as hereinbefore provided, the debts, liabilities, and obligations of the Agency shall be the debts, liabilities, or obligations of the Agency alone and not of the parties to this Agreement. The Agency shall procure insurance, including Directors and Officer's liability insurance, as it shall, in its reasonable discretion determine necessary in view of the scope of the POTENTIAL PROJECT.

## NOTICE OF AGREEMENT

35. Initial Notice. Within thirty (30) days of the effective date of this Agreement, the Agency or the City on behalf of the Agency shall cause a notice of the Agreement to be prepared in the manner set forth in Section 6503.5 of the Government Code and filed with the Office of the Secretary of State.

36. Additional Notices. Within thirty (30) days of the effective date of any amendment to this Agreement, the Agency or the Housing Authority shall prepare and file with the Office of the Secretary of State the notice required by said Section 6503.5.

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## TERMINATION, RESCISSION, WITHDRAWAL

37. Term. The Agency shall continue until this Agreement is rescinded or terminated as herein provided.

38. Rescission or Termination. This Agreement may be rescinded and the Agency terminated by written consent of all Members; provided, however, there are no outstanding bonds or other debts or lease obligations of the Agency.

39. Withdrawals. Any Member may withdraw from the Agency at any time or upon giving each of the other Members written notice thirty (30) days prior to the end of a fiscal year; provided, however, any withdrawing Member shall be obligated for all expenses incurred prior to withdrawal as previously authorized by the Member's governing agency. Notwithstanding the foregoing, any Member may withdraw from this Agency if the Special Legislation is not enacted, or for any other reason, on or before September 30, 2002, by seven (7) days written notice to the Agency and the other Members.

## NEW MEMBERS, AMENDMENTS

40. Admission of New Members. Additional public entities may become Members of the Agency upon such terms and conditions as may be provided by the Board, evidenced by the execution of a written addendum to this Agreement signed by all of the Members, including the additional Member.

41. Amendments. This Agreement may be amended only by agreement signed by all of the Members and as approved by resolution adopted by the governing body of each Member.

42. Attorney's Fees. In the event an action is commenced by any party to this Agreement to enforce or construe its rights or obligations arising from this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled, to recover all statutory costs plus a reasonable amount for attorneys', engineers', and consultants' fees in regard thereto.

43. Notice. Any notice or instrument required to be given or delivered may be given or delivered by depositing the same in any United States Post Office registered or certified, postage prepaid & addressed to:

CITY OF SAN DIEGO  
202 C Street, 9A  
San Diego, California 92101  
Attn: City Manager

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Housing Authority of the City of San Diego  
c/o San Diego Housing Commission  
1625 Newton Avenue  
San Diego, CA 92113  
Attention: Executive Director

Redevelopment Agency of the City of San Diego  
202 C Street  
San Diego, California 92101  
Attention: Executive Director

San Diego Unified School District  
4860 Ruffner Street  
San Diego, CA 92111  
Attention: Chief Operating Officer

And

San Diego City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101  
Attention: Redevelopment

And

General Counsel  
San Diego Housing Commission  
1625 Newton Avenue  
San Diego, CA 92113

44. Severance Clause. If any section, subsection, sentence, clause, or phrase of this Agreement, or the application thereof, to any of the Members for any other person or circumstances, is for any reason held invalid, the validity of the remainder of the Agreement, or the application of such provision to the other Members, or to any other person or circumstances, shall not be affected thereby. Each of the Members hereby declares that it would have entered into this Agreement and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, or the application thereof, to any Member or any other person or circumstance be held invalid.

45. Separate Entity. The JPA is a separate legal entity from each of the members of the JPA. The JPA shall procure such general liability insurance, as the Board shall approve. In no event, however, shall such insurance be less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, per year, with an aggregate of no less than FIVE MILLION DOLLARS (\$5,000,000.00).

46. Compliance with Public Contracting Code Concerning Disabled Preferences and Military Preferences. The JPA shall be governed by the applicable participation goals of Section 6522 of the Government Code for Disabled and Military.

47. Eminent Domain Provisions. The provisions of California Code of Civil Procedure Section 1240.140 shall be applicable to the JPA.

48. Signatures. This agreement may be signed in counterpart.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals by their respective corporate officers thereunto, duly authorized, the day and year first above written.

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Clerk

**Signatures on File  
With Original Document**

CITY OF SAN DIEGO

By: \_\_\_\_\_  
Michael Uberruaga  
City Manager

APPROVED AS TO FORM AND LEGALITY:  
CASEY GWINN,  
CITY ATTORNEY

By: \_\_\_\_\_  
Carrie Gleeson, Deputy

HOUSING AUTHORITY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Elizabeth C. Morris  
Executive Director

APPROVED AS TO FORM AND LEGALITY:  
CASEY GWINN, GENERAL COUNSEL

By: \_\_\_\_\_  
Prescilla Dugard, Deputy



REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_

Hank Cunningham  
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY:  
CASEY GWINN,  
AGENCY GENERAL COUNSEL

By: \_\_\_\_\_  
Carrie Gleeson, Deputy

KANE, BALLMER & BERKMAN,  
AGENCY SPECIAL COUNSEL

By: \_\_\_\_\_  
Glenn F. Wasserman

SAN DIEGO UNIFIED SCHOOL  
DISTRICT

By: \_\_\_\_\_

Name:  
Title:

APPROVED AS TO FORM AND LEGALITY:  
\_\_\_\_\_  
SCHOOL DISTRICT GENERAL COUNSEL

By Tad Parzen

SPECIAL LEGISLATION-SAN DIEGO MODEL SCHOOL  
DEVELOPMENT AGENCY (DRAFT)

6531. (a) The Legislature declares and finds that it is in the best interests of communities located within cities for the public agencies enumerated below to form joint powers agencies to provide for the orderly and coordinated acquisition, construction and development of model school projects, which may include the acquisition of land by negotiation or eminent domain, the construction of schools, the construction of recreational facilities and/ or park sites, the construction of replacement and other housing, including market rate, moderate income and low income housing. The Legislature also finds that the coordinated construction of such projects by redevelopment agencies, school districts, housing authorities/commissions and cities is of great public benefit will save public money and time in supplying much needed replacement housing lost when schools are constructed within existing communities. The Legislature further finds that legislation is needed to allow redevelopment agencies, school districts, housing authorities and/or commissions and/or cities to use their powers to the greatest extent possible to expedite, coordinate and streamline the construction and eventual operation of such projects, whether or not such agencies hold such powers in common.

- (b) Therefore, notwithstanding any other provision of law, and to facilitate the use of joint powers agreements between redevelopment agencies, housing authorities/housing commissions, cities and/or school districts, the Redevelopment Agency of the City of San Diego, the Housing Authority of the City of San Diego/San Diego Housing Commission, the San Diego Unified School District and/or the City of San Diego are hereby authorized to create and to operate, one or more joint powers agencies, including, if desirable, one for each model school project, through the use of joint powers agreement(s) for the development and construction of such projects, provided that such projects are located within the Redevelopment Agency Project Area(s) in the City of San Diego. The initial agency has been formed and is named the San Diego Model School Development Agency, hereinafter referred to as "the Agency." This

Agency, as well as all subsequent agencies ("agencies"), shall have all the powers of a redevelopment agency pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, all of the powers of a Housing Authority pursuant to Health and Safety Code Section 34200 et. seq. , all of the powers of the City of San Diego pursuant to its charter and state law and all of the powers of the San Diego Unified School District. In addition, the Agency and all subsequent agencies shall also have all the powers of a joint powers agency granted pursuant to this chapter, provided that all of the powers of the Agency and subsequent agencies shall be used for the acquisition of property for and the construction, improvement and financing of project(s) and facilities within the project(s) including all necessary improvements, for a school or school(s), housing, park and recreational facilities and any other facilities reasonably necessary for the proper operation of the project, and each portion thereof, hereinafter referred to as "the project(s)". All of these powers shall be and are hereby conferred upon the San Diego Model School Development Agency, which has already been formed, nunc pro tunc to the date of its formation. Such powers are also conferred upon any other agencies formed pursuant to the authority of this Section 6531. The housing component of the Project, or any other project, may consist of a combination of housing types, including both for rent and for sale housing. The housing may be sold and/or rented at any combination of low-income, moderate income and/or market rates, provided that the funds derived from the market rate units are utilized to defray the costs of construction, acquisition, or operation of the balance of the project(s). It is recognized that the housing is being developed as part of the project to mitigate the traditional loss of housing that occurs with the construction of new schools and their facilities within existing communities.

(c) The Agency shall be governed by a board of directors whose composition shall be as set forth in the joint powers agreement(s), as revised from time to time, and as determined by the Agency and/or agencies, and as designated in the bylaws of the Agency and/or agencies.

(d) Any member of the Agency or agencies, including the School District, may transfer and contribute funds to the Agency, including bond funds, to be deposited into and to be held in a Facility Fund to be expended for purposes of the acquisition of property for, and the development and construction of any facility.

(e) Nothing contained in this Section 6531 shall preclude the Agency and/ or agencies from distributing portions of the project(s) or facilities within the project, at the completion of the construction of the facility, to a member of the Agency to operate those portions of the project or facility, which the member is legally permitted to operate. Such distribution provisions shall be set forth in the joint powers agreement(s), if applicable.

(f) The Agency or agencies may award contract(s), including those for the construction of a school pursuant to this section, after requesting detailed proposals from prospective contractors and/ or developers and evaluating said proposals for the "best value" to the school district participating in the Agency or agency, notwithstanding any other provision of law. The award of the contract shall be made to the responsible proposer whose proposal is determined by the Agency or agency to constitute the best value to the school district. "Best Value" means a value determined by objective criteria and may include, but need not be limited to, price, features, functions, life-cycle costs, and other criteria deemed appropriate.

RESOLUTION NUMBER \_\_\_\_\_

ADOPTED ON \_\_\_\_\_

A RESOLUTION OF THE SAN DIEGO CITY COUNCIL  
AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF  
POWERS AGREEMENT TO CREATE THE SAN DIEGO  
MODEL SCHOOL DEVELOPMENT AGENCY AND  
AUTHORIZING THE REQUEST FOR SPECIAL STATE  
LEGISLATION FOR ADDITIONAL POWERS FOR THE SAN  
DIEGO MODEL SCHOOL DEVELOPMENT AGENCY.

WHEREAS, the San Diego Unified School District [District] intends to construct a new elementary school in the general vicinity of 43rd Street and Myrtle Street in the City Heights Redevelopment Area resulting in the loss of affordable housing units; and

WHEREAS, the Housing Authority of the City of San Diego [Housing Authority] desires to encourage the development of affordable housing in conjunction with the development of the, school site to mitigate against the loss of housing caused by development of the school site and to develop additional affordable housing; and

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] is engaged in activities necessary to carry out and implement the redevelopment plan for the City Heights Redevelopment Project in the City of San Diego; and

WHEREAS, the City of San Diego [City] is interested in the redevelopment of the area and the potential for joint use of school fields and/or City park land on or adjacent to the school site; and

WHEREAS, the Joint Exercise of Powers Act (section 6500 *et. seq.* of the California Government Code) permits public agencies to jointly exercise any power common to them by entering into an agreement for that purpose that is authorized by the respective governing bodies of the public agencies; and

WHEREAS, the parties agree that a joint effort would facilitate the planning, financing, and construction of a new elementary school, multifamily mixed-income housing, recreational opportunities and park space, neighborhood commercial uses, additional family services, and other complementary facilities; and

WHEREAS, the City, Housing Authority, District, and Agency propose to enter into joint-powers agreement for the planning, design, and development of an elementary school, multi-family mixed income housing, community service facilities, public park space, neighborhood commercial uses, and other improvements and facilities within the City Heights Redevelopment Project Area; and

WHEREAS, the joint-powers agreement also 'contemplates seeking special legislation amending the Joint Exercise of Powers Act to provide additional powers necessary for implementation of the City Heights Model School Project and other similar projects; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego as follows:

1. That the City Manager is authorized and empowered to execute, for and on behalf

of the City, a joint-powers agreement with the Housing Authority, District, and Agency, substantially in the form of and on the terms set forth in the "Joint Exercise of Powers Agreement Creating the San Diego Model School Development Agency" on file in the office of the City Clerk as Document No. RR- 296732.

2. That the Agency approves the seeking special legislation from the California State Legislature to amend the Joint Exercise of Powers Act to provide additional powers to the joint-powers agency to implement the City Heights Model School Project and potentially other similar projects, substantially as set forth in the document on file in the office of the City Clerk as Document No. RR-296732.

APPROVED: CASEY GWINN, General Counsel

**Signature on File  
With Original Document**

By \_\_\_\_\_  
Carrie L. Gleeson  
Deputy City Attorney

PD:cdk:ai  
06/12/02  
Orig.Dept. SDHC  
R-2002-1788  
Redv:RA-2002-154  
HousA:HA-2002-56

Passed and adopted by the Council of San Diego on

JUN 25 2002 -

by the following vote:

YEAS: PETERS. WEAR. ATKINS. STEVENS. MAIENSCHIN. FRYE. MADAFE  
INZUNZA. MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE..

AUTHENTICATED BY: DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

Seal)

By: MARY A. CEPEDA , Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true  
and correct copy of RESOLUTION NO .R- 296732 , passed and  
adopted by the Council of The City of San Diego, California on -  
JUN 25, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By : MARY A. CEPEDA, Deputy